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Via ECFS and Hand Delivery

Ms. Marlene H. Dortch, Secretary **Federal Communications Commission** 445 12th Street, S.W. Washington, D.C. 20554

> Blue Wireless's Ex Parte Response to Supplemental Submissions Docket 13-54

Dear Ms. Dortch:

On June 5, 2013, the Wireless Telecommunications Bureau directed the proponents of the applications at issue in this Docket to submit responses to informational requests propounded by the Commission. AT&T and Atlantic Tele-Network (ATN) both appear to have at last submitted their responses to the Commission's request. Buffalo-Lake Erie Wireless Systems Co., LLC ("Blue Wireless") has examined the material submitted and has the following comments. We note that the undersigned has examined the documents for which "confidential" or "highly confidential" status was claimed by the

[&]quot;Information and Discovery Request" dated June 5, 2013.

proponents pursuant to the provisions of the protective orders issued on June 5, 2013.² Accordingly, where a response below is based on my review of such material, the pertinent language has been redacted from public view in the version submitted in the Docket, with an unredacted copy provided to the Commission's staff.

The material supplied by the applicants in response to the Commission's inquiry was voluminous to the point where one might consider it a classic "information dump" intended to bury any damaging information in a mass of a material where it could not be found. Blue Wireless itself was deterred by the volume of material but nevertheless spot-checked the information and examined the summary charts. This examination shows that the applicants' claimed justifications for the transaction are not supported by the actual facts as they themselves present them.

One of the key factors cited by the applicants to justify the need for the proposed license transfer is the difficulty occasioned by excessive roaming charges. Of course, the problem of excessive roaming charges is one that has been a source of constant complaint by smaller regional carriers. As Blue Wireless pointed out in its original filing, the problem of excessive roaming rates is real, but it is exacerbated with each incremental acquisition by the two major carriers. Reasonable roaming rates available to competing carriers are a direct product of a true, multi-player marketplace where multiple carriers with differing geographic coverage areas need to roam on each others' networks. That competitive marketplace model becomes less and less accurate each time a large regional carrier is bought up by one of the two majors. That simply leaves fewer roaming partners for the remaining carriers and accelerates the very problem that ATN complains of: excessively high roaming rates. In other words, approval of this transaction will necessarily worsen the roaming situation for the remaining independent CDMA-based carriers like Blue Wireless.

This particular problem will be exacerbated even further if the newly proposed acquisition of Leap Communications by AT&T is allowed to go forward. If that acquisition is approved, three of the

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Applications of AT&T Inc. and Atlantic Tele-Network, Inc. for Consent To Transfer Control and Assign Licenses and Authorizations, Second Protective Order, WT Docket No. 13-54, DA 13-1310 (rel. June 5, 2013).

market in the last year, leaving the remaining small independents with only Sprint as a viable roaming partner in much of the US. But [BEGIN BLUE WIRELESS CONFIDENTIAL] [END BLUE WIRELESS CONFIDENTIAL] These problems are structural and will simply accelerate as each additional regional carrier throws in the towel. Despite these structural problems, the information supplied by ATN does not support the statements in its public interest statement on which it heavily relies. At p.22 of Exhibit 1 of the application, ATN (or Allied, as it refers to its operating entity) complains about the "explosion" in mobile broadband usage which will have a deleterious effect on ATN's roaming costs and its ability to invest in its network.³ But when we look at [BEGIN BLUE WIRELESS CONFIDENTIAL]

largest independent CDMA carriers (MetroPCS, Allied and Cricket) will have disappeared from the

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[&]quot;As mobile broadband usage continues to explode -- predicted to increase 18-foldbetween 2011 and 2016 -- the relatively higher use of data roaming by Allied's customers will exacerbate the volume of roaming traffic, and thus further increase Allied's costs relative to its competitors. Such rapidly increasing spending on roaming reduces the amount of capital that Allied has available to invest in its network."

[END BLUE WIRELESS

CONFIDENTIAL]

Finally, [BEGIN BLUE WIRELESS CONFIDENTIAL]

[END BLUE WIRELESS CONFIDENTIAL] Far from suffering from the roaming market, ATN somehow seems to be thriving.

This quick review of some of the actual numbers supplied by ATN in support of its argument that it is a failing company that would be hard-pressed to survive absent this sale to AT&T raises questions about the validity of its other "fact" based arguments.

In addition to the confidential material supplied by the applicants, there is other new information which Blue Wireless believes should be brought to the Commission's attention. In its July 30, 2013 Press Release reporting its Second Quarter financial results, ATN reported that its subscriber numbers have actually *increased* over the last twelve months. See Table 4 in http://files.shareholder.com/downloads/ABEA-2WOFJF/2635477873x0x680649/e0c29617-2ad9-4c33-9b81-71c47a539708/ATNI_News_2013_7_30_General_Releases.pdf. The report shows that ATN has experienced gross additions over the last year of 70,735 subscribers and net additions of more than 11,000 subscribers. While we salute ATN for its success, this rosy picture directly contradicts the dire prognosis presented in the application. There at pp 19 - 24 of the Public Interest Exhibit, ATN bemoaned its loss of 30% of its subscribers since 2010 and predicted further bleeding of subscribers due to the factors it cited thereafter. ATN sold itself short in the application since it seems to not only be surviving but actually thriving and gaining additional subscribers and revenues, despite its dire predictions to the contrary.

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In evaluating whether ATN is, and will be, a viable competitor, the Commission should discount, if not ignore entirely, ATN's statements in the application and look instead at its continuing success as a regional competitor against the major carriers. It seems there is a place for independent regional carriers after all.

Respectfully submitted,

Donald J. Evans

Counsel for Buffalo-Lake Erie Wireless, LLC

cc: Scott Patrick

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